

U. S. GOVERNMENT PRINTING OFFICE



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ann Riley & Associates, Ltd.

File: B-237365

Date: November 15, 1989

DIGEST

Protest that solicitation is overly restrictive filed with the contracting agency on the closing date for receipt of initial proposals, but prior to the hour specified, is untimely because agency's proceeding with the receipt of initial proposals in the face of the protest constituted adverse agency action such that protest to the General Accounting Office more than 2 months later based on agency's written denial of the agency-level protest is untimely.

DECISION

Ann Riley & Associates, Ltd. protests the award of a contract to Heritage Reporting Corporation under request for proposals (RFP) No. SECHQ1-89-R-0008 issued by the Securities and Exchange Commission (SEC) for stenographic reporting and transcription services. Riley contends that the RFP overly restricts competition because it provides for only one award for services which are to be provided at several locations.

We dismiss the protest as untimely.

The RFP was issued on June 13, 1989, with initial proposals due by July 13. On July 6, the solicitation was amended to extend the closing date for receipt of initial proposals to July 20. Riley did not submit a proposal. Instead, on July 20, it filed a protest with the agency contending that the solicitation was unduly restrictive because it called for only one award for the various locations.

The protester states that it filed its agency-level protest on the date of closing but prior to the 3 p.m. closing time. Despite Riley's protest, the agency proceeded with the procurement and received the proposals as scheduled. On September 27, the contracting officer denied Riley's protest

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and made award to Heritage. On October 10, Riley protested to our Office.

Bid protests are serious matters which can adversely impact on the procurement system unless effective and equitable procedural standards exist, so that all parties have a fair opportunity to present their cases, and protests can be resolved in a relatively speedy manner without unduly disrupting the government's procurement process. Dock Express Contractors, Inc. - Request for Reconsideration, B-223966.2, Mar. 4, 1987, 87-1 CPD ¶ 243. Thus, where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely under our Bid Protest Regulations, must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1989). The term "adverse agency action" is defined in our Regulations to include the agency's proceeding with the receipt of proposals in the face of the protest. 4 C.F.R. § 21.0(f); Consolidated Industrial Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58. Once the contracting activity proceeds with accepting offers, the protester is on notice that the contracting activity will not undertake the requested action and consequently timeliness is measured from this point. Carlisle Tire & Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457.

Here, Riley waited until the day of closing to file its agency-level protest, even though it received the solicitation almost 2 months beforehand. The agency thus was forced to either postpone closing or proceed with acceptance of proposals since any reasonable opportunity to otherwise act on the protest was foreclosed by Riley's filing its protest on the closing date. In this case the agency chose to proceed with receipt of the proposals.

The protester argues that since it did not hear from the agency it was reasonable for it to assume that the agency was considering corrective action. We disagree. It is our view that since an agency is not obligated to postpone the receipt of proposals because of a protest the usual circumstance would be for the scheduled receipt of proposals and subsequent procurement actions to proceed. Thus, we think that since Riley heard nothing to the contrary from the agency it should not have concluded from the silence that the closing was postponed or that the procurement was being delayed while corrective action was considered. Consequently, Riley should have been aware that the agency was proceeding with the scheduled closing in the face of its protest filed earlier that day. Riley's subsequent protest to our Office, filed more than 2 months later, is therefore

untimely and will not be considered. See Kahn Industries, Inc.--Request for Reconsideration, B-237322.2, Oct. 31, 1989, 89-2 CPD ¶ ____.

Riley asserts that we should waive any objection to timeliness here because the resolution of its protest would not unduly disrupt the procurement process. Riley states that the awardee is the incumbent and that the current contract contains several 1-year options. According to Riley, if the protest is sustained we can simply recommend that the remaining options not be exercised and consequently no disruption in service would occur.

The only exceptions to our timeliness requirements concern instances where there was good cause for the untimely filing (some compelling reason beyond the protester's control prevented the protester from filing a timely protest) or a significant issue (one of widespread interest to the procurement community that has not been considered before) is involved. 4 C.F.R. § 21.2(b); Grant Technical Services, B-235231.2, May 26, 1989, 89-1 CPD ¶ 514. Neither circumstance is present here.

The protest is dismissed.



Ronald Berger
Associate General Counsel